New England Regional Council of Carpenters, Local 33 *and* New England Finish Systems, LLC and International Union of Painters and Allied Trades, District Council 35, Party in Interest/Intervenor

New England Regional Council of Carpenters, Local 33 *and* Colonial Systems, Inc. and International Union of Painters and Allied Trades, District Council 35, Party in Interest/Intervenor. Cases 01–CD–183789 and 01–CD–183838

February 27, 2018

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN KAPLAN AND MEMBERS MCFERRAN AND EMANUEL

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act. New England Finish Systems, LLC (NEFS) and Colonial Systems, Inc. (Colonial) (collectively Employers) each filed a charge on September 7, 2016,[1] alleging that New England Regional Council of Carpenters, Local 33 (the Carpenters) violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing the Employers to assign certain work to employees it represents rather than to employees represented by International Union of Painters and Allied Trades, District Council 35 (DC 35). A hearing was held on October 11 and continued on November 28, December 1, 8, 9, and 12 before Hearing Officer Gene Switzer. Thereafter, the Employers jointly filed a posthearing brief, and the Carpenters and DC 35 each filed posthearing briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that NEFS, a New Hampshire limited liability company, is engaged in the construction business installing metal studs, drywall, furnishings, and other interior systems and has performed services valued in excess of $50,000 annually in states other than New Hampshire. The parties also stipulated that Colonial, a Massachusetts corporation, is engaged in the business of office furniture installation and has performed services valued in excess of $50,000 annually in states other than Massachusetts. The parties further stipulated, and we find, that the Employers are engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Carpenters and DC 35 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTES

A. Background and Facts of the Dispute in Case 01–CD–183789

NEFS is located at One Delaware Drive, Salem, New Hampshire, and has been in business since 1985. NEFS started as a drywall installation company performing interior finish work using metal studs and drywall. NEFS has historically employed individuals represented by the Carpenters (Carpenters or Carpenters-represented employees) to do this work and is signatory to a collective-bargaining agreement with the Carpenters, the most recent of which is effective September 1, 2015, to August 31, 2019 (Carpenters' Agreement). In the past, NEFS has also employed tapers for drywall finishing; the tapers are represented by DC 35. As a result of its prior employment of the tapers, NEFS signed a collective-bargaining agreement with DC 35, the most recent of which is effective July 1, 2013, to June 30, 2017 (DC 35 Agreement).

The president of NEFS, Ray Houle, also serves as the president of Specialty Services of New England, LLC (Specialty Services), and a supplier of materials. Specialty Services does not have any employees and is a not a signatory to any collective-bargaining agreement. When Specialty Services is awarded installation work, it subcontracts to NEFS if it needs carpenters and to Paint Systems of New England, LLC (Paint Systems), a signatory to the DC 35 Agreement, if it needs painters or glaziers, which DC 35 also represents.[2]

1. Shower door installation at the Parcels B and C seaport project

a. Background

In March 2015, Specialty Services subcontracted to NEFS to install glass shower doors and mirrors on two projects located in Boston, Massachusetts (Avalon I and Avalon II). This was the first time either Specialty Services or NEFS had installed shower door enclosures and mirrors. NEFS assigned Carpenters to perform the work at Avalon I. Once DC 35 learned that NEFS was performing the work with Carpenters-represented employees, it asked NEFS to cease and desist all work and to

[1] All dates are in 2016 unless otherwise indicated.

[2] There is no dispute that NEFS and Colonial, described below, are the responsible employers for purposes of resolving the jurisdictional disputes here.

comply with the DC 35 Agreement, which it claimed was being violated. At the time that NEFS and DC 35 met to discuss the dispute, half of the work at Avalon I had already been completed. The parties agreed that a composite crew would complete the rest of the work on a "one-to-one" basis—e.g., an equal number of DC 35 glaziers and Carpenters would be used.

Work on the Avalon II project began with only DC 35-represented glaziers. Five or 6 weeks into the project, one of the glaziers noticed a discrepancy in the size of the shower doors that they had been installing. After the developer, Avalon Bay, investigated the discrepancy and determined that all the shower doors that had already been installed had to be removed, NEFS assigned two Carpenters to work alongside the glaziers to remove the shower doors. DC 35 protested the assignment of Carpenters to the project and filed a grievance against NEFS with the New England Painting, Finishing and Glazing Industries District Council 35 Joint Trade Board (DC 35 Joint Trade Board). The Carpenters also refused to relinquish the work, and NEFS filed a charge with the NLRB.[3] Both the grievance and the Board charge were withdrawn as part of a nonprecedential settlement by which the parties agreed to have the work performed by a composite crew of NEFS employees represented by the Carpenters and Paint Systems glaziers represented by DC 35.

b. The instant dispute

On about August 12, Specialty Services contracted with NEFS to perform work at the Parcels B and C project in the Seaport District in Boston, Massachusetts. First, NEFS President Houle contacted DC 35 representative Paul Canning and Carpenters representative John Murphy to advise them that he expected to have a composite crew work on the project, which included shower door installation work similar to the Avalon projects. Murphy told Houle that he had no issues with a composite crew. Paul Kelly, DC 35's attorney, however, advised Houle that DC 35 was claiming all of the work associated with the installation of the shower doors, opposed assignment of the work to a composite crew, and would protest by all legal means any efforts to compromise its jurisdiction. After Houle informed Murphy about DC 35's claim, Murphy responded that there would be a job action if all of the work was assigned to DC 35.

At the time of the hearing, the installation of the shower doors at the Parcels B and C Seaport project was ongoing and being performed by a composite crew of Carpenters- and DC 35-represented employees.

2. The demountable glass partitions at 125 High Street

NEFS has been installing the Infinium Wall brand of glass demountable wall systems for about a year and a half. The glass panels that are used in this system are either "unitized" or "unclad." A unitized glass panel comes from the manufacturer with the glass already clad or framed; an unclad or "raw" glass panel is simply a plane of glass. In the Infinium Wall systems, both types of glass panels are affixed to the ceiling and/or floor in a track. All of the work that NEFS performs in installing systems using unitized panels is assigned to Carpenters-represented employees. By contrast, where the wall system being installed involves handling unclad or raw glass, NEFS generally subcontracts the work to Paint Systems, which assigns the work to DC 35 glaziers. However, if there are only a limited number of unclad or "raw" glass panes to install, NEFS assigns the entire installation to Carpenters-represented employees.

In the summer of 2016, NEFS was awarded a contract to install interior demountable glass walls manufactured by Infinium Walls at a project located at 125 High Street in Boston. NEFS assigned Carpenters-represented employees to affix the ceiling channels and install the unitized glass panel walls. NEFS also assigned the installation of the unclad doors to Carpenters-represented employees because, according to Houle, there would only be two or three doors to install at a time and it would not have been productive to subcontract such limited work.

On about August 9, DC 35 filed a grievance against NEFS with the DC 35 Joint Trade Board for using Carpenters to complete this work. DC 35 claimed that the work was covered by its agreement and that it should have been assigned to DC 35-represented glaziers. On about September 7, Houle spoke to Carpenters representative Murphy about DC 35's claim, and Murphy responded that there would be a job action if any of the work was given to DC 35 glaziers. By the time of the hearing, the work had been completed.

B. Background and Facts of the Dispute in Case 01–CD–183838

Colonial is an office furniture installation company that contracts with office furniture dealerships, furniture suppliers, general contractors, and business owners. It installs walls, doors, cubicles, conference rooms, file cabinets, desks, and seating. Colonial, a signatory to agreements with both the Carpenters and DC 35, employs a core group of Carpenters-represented employees who are assigned exclusively to install all aspects of a unitized demountable glass wall system—including the

[3] New England Council of Carpenters, Local 33 (New England Finish Systems), Case 01–CD–180180.

tracks that hold the walls in place, the doors, and all associated hardware. Colonial also installs a second type of wall system called a stick built system. In this system, a structure is built, and tiles that form the basis of the wall are then affixed to the structure. These tiles are made up of a variety of materials, including unclad or raw glass. When working on stick built systems, Colonial assigns Carpenters to build the structure and assigns DC 35-represented glaziers to affix the unclad or raw glass panels into that frame. If there are only a few raw glass panels or tiles, Colonial also assigns that limited work to Carpenters. When Colonial needs glaziers, it calls DC 35 for a referral.

The dispute centers on Colonial's installation of interior demountable glass walls on projects located at 1 Federal Street, 8th Floor, Boston; the Boston Public Library's Career Planning Center; Microsoft at One Memorial Drive, Cambridge; 200 Berkley Street, Floors 9-12, Boston; and Partners Healthcare, Assembly Row, Somerville. The interior demountable glass wall systems installed in these projects are premanufactured modular systems including both the unitized system and the stick built system. Colonial assigned the structural installation to Carpenters-represented employees and the handling and installation of the raw glass to DC 35 glaziers.

In August, DC 35 filed multiple grievances with the DC 35 Joint Trade Board against Colonial alleging, in part, that Colonial breached the trade jurisdiction provision of the DC 35 contract by assigning work at these five projects to Carpenters. At the time these grievances were filed, all of the projects had been completed except for the Partners Healthcare project.

On September 7, Colonial's vice president of operations Matthew McKenna told Carpenters representative Murphy that Colonial had to go before the DC 35 Joint Trade Board because of the grievances filed against it. Murphy replied that if Colonial changed the way that it assigned labor, the Carpenters would file a grievance against Colonial for assigning Carpenters' work to glaziers and would engage in job actions at Colonial jobsites. He repeated the threat on September 11.

III. WORK IN DISPUTE

The work in dispute in Case 01–CD–183789, as set forth in the Notice of Hearing, and as further clarified in the Notice Rescheduling Hearing and Clarifying Disputed Work, involves the installation of glass shower doors at the project known as Parcels B and C in the Seaport District of Boston, Massachusetts, and the installation of interior demountable glass walls, including all of the glass/glazing, frames, tracks, glass door hardware and rollers, glass partitions of any size, associated with the installation of those walls, at 125 High Street, Boston, Massachusetts.

The work in dispute in Case 01–CD–183838, as set forth in the Notice of Hearing, and as further clarified in the Notice Rescheduling Hearing and Clarifying Disputed Work, is the work related to the installation of interior demountable glass walls, including all of the frames, tracks, glass door hardware and rollers, glass partitions of any size, and/or demountable partitions of any size, but excluding the handling and installation of raw glass tiles or panels,[4] at the five locations in the Boston area described above.

We find, based on the record that the work in dispute is as described above.

IV. CONTENTIONS OF THE PARTIES

Employers NEFS and Colonial both contend that there is reasonable cause to believe that the Carpenters violated Section 8(b)(4)(D) of the Act.

In Case 01–CD–183789, NEFS and the Carpenters contend in their briefs that the work associated with the installation of shower doors at the Parcels B and C Seaport project—based on the Carpenters' Agreement, company preference, past practice, area and industry practice, and economy and efficiency of operations—should be assigned to employees represented by the Carpenters.

With respect to the installation of the interior demountable glass walls at 125 High Street, NEFS and the Carpenters contend that Carpenters should be assigned that work. They agree that the handling and installation of raw glass in these systems should ordinarily be assigned to glaziers represented by DC 35. Nonetheless, because of the limited amount of raw glass being installed on this project, NEFS contends that the work was properly assigned to Carpenters on the basis of the Carpenters' Agreement, economy and efficiency of operations, company preference, past practice, area and industry practice, and skill and training.

DC 35 contends that all of the work in dispute at the Parcels B and C Seaport project and at 125 High Street should be assigned to DC 35-represented glaziers based on the DC 35 Agreement, economy and efficiency, skill and training, and area and industry practice with employers other than NEFS and Paint Systems.

In Case 01–CD–183838, Colonial and the Carpenters contend that all of the work associated with the installation of the interior demountable glass walls on the five projects at issue, with the exception of the handling and

[4] This is in contrast to Case 01–CD–183789, in which the Carpenters is disputing the assignment of the work involved in the handling and installation of the apparently minimal amount of raw glass tiles or panels involved.

installation of raw glass tiles or panels, is properly assigned to Carpenters-represented employees on the basis of the Carpenters' Agreement, company preference, past practice, area and industry practice, skill and training, and economy and efficiency of operations. DC 35 contends that all of the work on those projects is properly assigned to DC 35 glaziers based on the DC 35 Agreement, economy and efficiency, skill and training, and area and industry practice with employers other than Colonial.

V. APPLICABILITY OF THE STATUTE

The Board may proceed with a determination of a dispute under Section 10(k) of the Act only if there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. *Operating Engineers Local 150 (R&D Thiel)*, 345 NLRB 1137, 1139 (2005). This standard is met if there is reasonable cause to believe that there are competing claims for the disputed work between rival groups of employees, and that a party has used proscribed means to enforce its claim to that work. Id. Additionally, there must be a finding that the parties have not agreed on a method of voluntary adjustment of the dispute. Id. On this record, we find that these requirements have been met.

1. Competing claims for work

We find reasonable cause to believe—and it is not disputed—that the Carpenters and DC 35 have claimed the work in dispute for the employees they respectively represent.

a. Case 01–CD–183789

The performance of the disputed work at Parcels B and C by a composite crew of Carpenters- and DC 35-represented employees establishes both unions' separate claims to that work. *Laborers Local 310 (KMU Trucking & Excavating)*, 361 NLRB 381, 383 (2014). Further, DC 35 expressly claimed the work, asking NEFS to cease and desist assigning the work to the Carpenters, and, in turn, the Carpenters' threat of a job action if any of the work was given to DC 35 establishes the Carpenters' claim to the work. Similarly, the performance of the disputed work at 125 High Street by Carpenters-represented employees and the Carpenters' threat of a job action both establish the Carpenters' claim to that work, and DC 35 claimed the work by filing a grievance against NEFS with the DC 35 Joint Trade Board alleging that the work at 125 High Street should have been assigned to DC 35 glaziers pursuant to the trade jurisdiction provision of the DC 35 Agreement. See, e.g., *Operating Engineers Local 18 (Donley's, Inc.)*, 360 NLRB 903, 906 (2014) (citing, e.g., *Laborers Local 265 (AMS Construction, Inc.)*, 356 NLRB 306, 308 (2010), and cases cited therein) (grievances alleging that work was assigned in violation of a collective bargaining agreement constitute demands for the disputed work); *Laborers (Esbach Bros., LP)*, 344 NLRB 201, 202 (2005) (same).

b. Case 01–CD–183838

The performance of the disputed work at the five projects by Carpenters-represented employees establishes the Carpenters' claim to that work. In addition, the Carpenters' repeated threats of a grievance and job actions if Colonial gave any of the disputed work to DC 35 glaziers also constituted a claim to the work. DC 35 claimed the work by filing a charge against Colonial with the DC 35 Joint Trade Board alleging that the work should have been assigned to DC 35 glaziers pursuant to the trade jurisdiction provision of the DC 35 Agreement.

2. Use of proscribed means

We find reasonable cause to believe that the Carpenters used means proscribed by Section 8(b)(4)(D) to enforce its claim to the work in dispute. In August, Carpenters representative Murphy threatened NEFS President Houle that there would be a job action if any of the work at the parcels B and C project was assigned to DC 35. On about September 7, Murphy threatened Houle that there would be a job action if any of the work at 125 High Street was given to DC 35 glaziers. As for the disputed work at the five projects in the Boston area, Murphy twice told Colonial's vice president that if Colonial changed the way that it was assigning the work—i.e., if it reassigned any of the work that had been assigned to the Carpenters to DC 35—the Carpenters would engage in job actions at Colonial's jobsites. These threats of job actions constitute proscribed means to enforce a claim to disputed work. *Laborers Local 310 (KMU Trucking & Excavating),* above, 361 NLRB at 383; *Operating Engineers Local 150 (Patten Industries)*, 348 NLRB 672, 674 (2006); *Operating Engineers Local 150 (R&D Thiel)*, above, 345 NLRB at 1140.

3. No voluntary method for adjustment of dispute

We further find that there is no agreed-upon method for voluntary adjustment of the dispute to which all parties are bound. On the first day of the hearing, the parties stipulated that there was no agreed-upon method for resolving the matters in dispute that was binding on all parties. On the second day of the hearing, however, DC 35 withdrew from the stipulation. It argued that Article 2 (Jurisdictional Procedure) of the Carpenters' Agreement includes a method for resolving the disputes, and that it was willing to participate and be bound by that procedure.

Article 2 states in relevant part:

> In the event a jurisdictional dispute arises, the disputing unions shall request the other union or unions involved to send representatives to meet with representatives of the Union and Employer to settle the dispute. If the above procedure or any other mutually agreed upon procedure fails to resolve the problem, then the Employer, at the request of the Union, agrees to participate in a tripartite arbitration with all the disputing parties.
>
> Decisions rendered by any of the above procedures shall be final, binding, and conclusive on the Employer and the Union parties to this agreement.

The capitalized "Union" is a defined term in the Carpenters' Agreement and refers to the Carpenters. The Carpenters has not invoked article 2 by requesting that the Employer participate in arbitration.

The Board has long held that "[t]o constitute an agreed-upon method for settlement, a procedure must bind all parties to the dispute." *Teamsters Local 952 (Westside Building Material Corp.)*, 275 NLRB 1001, 1004 (1985). DC 35 acknowledges that it is not a party to the agreement. It also acknowledges numerous Board decisions holding that an agreement between an employer and a union to submit a jurisdictional dispute to an agreed-upon method is not a voluntary method of adjustment for the second union to the dispute if that union is not contractually bound to that procedure. See, e.g., *Plumbers Local 393 (Therma Corp.)*, 303 NLRB 678, 680 (1991) (no agreed-upon method for resolving dispute where Plumbers union was not a signatory to the contract between employer and Laborers, which contained a jurisdictional dispute resolution mechanism); *Iron Workers Local 197 (Del Guidice Enterprises)*, 291 NLRB 1, 3 (1988) (no voluntary method of resolving dispute where contract between Iron Workers local and the employer contained an arbitration clause, but no such agreement bound the Mason Tenders Union, which also claimed the work). Nonetheless, DC 35 argues that the precedent is distinguishable because, unlike here, the nonsignatory unions in the cited cases were unwilling to participate in the rival unions' contractual dispute resolution methods. That argument is meritless. As these and numerous other cases establish, the Board's determination that a procedure constitutes an agreed-upon method for settlement hinges not on the parties' willingness to participate in the procedure but on whether the parties are legally bound to it, if not by their labor contracts then as signatories to broader industry or trade agreements.[5] As indicated above, DC 35 is not a party to, and is not bound by, the Carpenters' Agreement and its arbitration procedures, and there is no evidence of any relevant industry-wide agreement binding both unions.[6]

For the foregoing reasons, we find that there are competing claims for the work in dispute, there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, and there is no agreed-upon method for voluntary adjustment of the dispute. We accordingly find that the dispute is properly before the Board for determination.

VI. MERITS OF THE DISPUTE

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212*, 364 U.S. 573, 577–579 (1961). The Board's determination in a jurisdictional dispute is "an act of judgment based on common sense and experience," reached by balancing the factors involved in a particular case. *Ma-*

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[5] Compare *Operating Engineers Local 4 (Massachusetts Building-Wreckers and Environmental Remediation Assoc.)*, 363 NLRB No. 17 (2015) (finding agreed-upon method for dispute resolution where disputing Operating Engineers' and Laborers' unions were contractually bound to submit disputes to the same "Plan for the Settlement of Jurisdictional Disputes in the Construction Industry," to which the employer was also bound); *Plumbers Local 447 (Capitol Air Conditioning, Inc.)*, 224 NLRB 985, 986–987 (1976) (agreed-upon method of dispute resolution where disputing unions were members of the building trades department of the AFL–CIO and therefore bound by same jurisdictional dispute resolution procedure, to which employer was bound by its membership in relevant contractors' association); with *Operating Engineers Local 3 (Hawaiian Dredging & Construction Co.)*, 297 NLRB 953, 955 (1990) (no agreed-upon method where disputing unions' respective contracts lacked "explicit reference to a plan found to be binding on all parties").

DC 35's reliance on a 1973 General Counsel Memorandum, GC 73–82 (available on the Board website at http://www.nlrb.gov/reports-guidance/general-counsel-memos), which provided guidance to the Regions on processing Section 8(b)(4)(D) and Section 10(1) cases, is also unavailing. That non-binding memorandum raised the possibility that if the unions involved agree to participate in grievance proceedings under a contract between the employer and one of the unions, "such an ad hoc procedure" might qualify as an agreed-upon dispute method, and then ordered that any such cases be referred to the General Counsel for advice. GC Memo at 10–11. Subsequent Board decisions, however, as discussed above, clearly establish that all parties must be contractually bound to a procedure for it to constitute an agreed-upon method for settlement under Sec. 10(k). E.g., *Teamsters Local 952 (Westside Building Material Corp.)*, above.

[6] In this respect, the Employers and Carpenters argue that art. 2 is only applicable to unions who are signatories to collective-bargaining agreements with the same employer association, citing the plain language of the contract and testimony by the Carpenters' Director of Contractor Relations.

In light of our findings above, we find it unnecessary to pass on the Employers' additional arguments that DC 35's claim is time barred under Sec. 10(k) and that they are only required to participate in the tripartite arbitration upon the Carpenters' request.

chinists Lodge 1743 (J.A. Jones Construction Co.), 135 NLRB 1402, 1410–1411 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

The parties stipulated that the work in dispute is not directly covered by any Board orders or certifications. As mentioned above, Colonial and NEFS are signatories to a collective-bargaining agreement with the Carpenters, the most recent of which is effective September 1, 2015, to August 31, 2019, and with DC 35, the most recent of which is effective July 1, 2013, to June 30, 2017.[7]

The Carpenters contends that its Agreement covers all the individual elements of the work involved in the installation of demountable glass partition systems. Specifically, the Carpenters' Agreement defines a carpenter's work as including "[t]he erecting of structural parts of a house, building, or structure made of wood or any substitute, such as plastics or composition materials"; "[e]rection of all wood, metal, plastic, and composition partitions"; "fastening on of all wooden, plastic, or composition cleats to iron work or on other material"; "[t]he hanging, setting and installation of wood, metal or plastic doors, sash, jambs, bucks, casings, putting on of all hardware"; "[f]itting, installation and fastening of stops, beads and molding in doors and windows"; "the installation of all moldings made of wood, metal, plastic or composition"; "setting and hanging of all sash, doors, inside and outside blinds, windows, and other frames"; "putting on weather strips and caulking"; "[p]artitions, pre-cut and pre-fit trim and doors [. . .] sash, doors, trim, molding, screen and storm sash and doors"; and "assembling, handling of or the manufacturing of all wood, metal or plastic materials or products, also including the assembling, putting together of work after same has been machined, hand worked, or shaped." The Carpenters also identified the Infinium demountable system used by NEFS at 125 High Street as an acoustical partition and point out that the Carpenters' Agreement expressly covers "acoustical systems."

DC 35 also contends that its Agreement places the work in dispute within its traditional and historical jurisdiction. Specifically, its agreement defines its trade jurisdiction as including "window panels," "store front panels," "tempered and laminated glass," and "all interior glazing systems." Its Agreement also asserts jurisdiction over "all interior glazing systems including aluminum storefront or office front metal fabricated by metal fabricators or glass workers, partitions and demountable glazing systems, including those in any or all of the buildings related to store front and window wall."

We find that the Carpenters and DC 35 both have language in their agreements arguably covering the work in dispute involving the installation of interior demountable glass walls and glass shower doors. We therefore find that this factor is neutral.

2. Employer preference and past practice

As to demountable glass wall systems, representatives of both Employers testified that they prefer to use Carpenters-represented employees to perform the disputed work, that they currently assign this work to Carpenters, and that they have assigned these installations to the Carpenters for years. Specifically, Colonial's representatives testified that Colonial has had a consistent practice over the last 10 years of using Carpenters for all demountable wall systems, regardless of the materials used, including the glass demountable wall systems that started replacing cubicles in the early 2000s. While Colonial has a practice of hiring DC 35 glaziers to install raw glass when there is a substantial amount of raw glass to install as part of the demountable wall system, it continues to use Carpenters to install raw glass when there are only a few panels to install. Colonial asserts that its practices are evidenced by the fact that it employs 60 to 90 full-time Carpenters but no full-time DC 35-represented glaziers.

NEFS has also been installing demountable wall systems since the late 1980s and has consistently used its Carpenters-represented employees for that work. It only subcontracts to employers employing DC 35 glaziers for the installation of raw, unclad glass that may be part of the systems. NEFS also noted the inefficiency of subcontracting work that its own employees could perform. DC 35 concedes that both Employers have expressed a preference to assign the disputed work to Carpenters.

Based on the above, we find that this factor favors awarding the work involving interior demountable glass walls to Carpenters-represented employees.

With regard to the disputed work involving glass shower door installation at the Parcels B and C Seaport project, NEFS has only done two such projects. It contends, however, that it immediately established a practice of using a composite crew, and that DC 35 agreed to this practice. DC 35, for its part, argues that an employer should not to be permitted to rely on a past "practice" that was developed by violating another union's contract, which DC 35 claims occurred here. DC 35 also argues that the disputed shower installation work has not traditionally been performed by composite crews.

[7] Although NEFS President Houle told DC 35 in July that NEFS wished to repudiate the DC 35 Agreement, he subsequently told DC 35 about the Parcels B and C Seaport project and said that he was expecting to have the work performed with a composite crew.

The record shows that NEFS assigned its first shower door installation project (Avalon I) to its Carpenters-represented employees in March 2015. DC 35 claimed that the assignment was contrary to the DC 35 Agreement and asked NEFS to cease and desist from performing the work. It was only after NEFS and DC 35 met that it was agreed that the work would be completed with a composite crew.

Moreover, the second shower-door installation project, Avalon II, was not initially assigned to the Carpenters or to a composite crew. Rather, DC 35 glaziers were initially assigned that work and performed it for 5 to 6 weeks before an employee noticed problems in the size of the shower doors. Carpenters-represented employees were then assigned to help the glaziers remove the shower doors that had just been installed. When the Carpenters refused to relinquish the rest of the installation and DC 35 protested, the parties entered into a non-precedential agreement to have a composite crew finish the installation.

Thus, we find that the evidence does not support NEFS's contention that it has established a past practice of assigning shower door installations to Carpenters-represented employees or to a composite crew, as it has not customarily performed such work. See, e.g., *Carpenters Local 171 (Knowlton Construction Co.)*, 207 NLRB 406, 408 (1973) (record did not support employer's contention that its assignment of disputed work was consistent with past practice when the employer had not customarily performed such work in the area). In addition, we place little weight on the fact that NEFS's previous shower door installation projects and the work in dispute were completed by composite crews. As described above, those arrangements were compelled by the Carpenters' refusal to relinquish disputed work, and not by relevant considerations. *Longshoremen ILWU Local 19 (Seattle Tunnel Partners)*, 361 NLRB 1031, 1035–1036, 1036 fn. 12 (2014) (employer's proposal for a composite crew given little weight where employer made the proposal to accommodate its client's desire to have another union participate in the project), citing *Laborers Local 4 (The Cleveland Marble Mosaic Co.)*, 285 NLRB 230, 232 (1987) (employer's preference for a composite crew of laborers and stone setters, rather than a crew of laborers alone, was not "freely made" and thus not entitled to much weight where the employer had changed its preference because of concerns about a work stoppage); *Longshoremen ILWU Local 50 (Brady-Hamilton Stevedore Co.)*, 223 NLRB 1034, 1037 (1976), reconsideration granted and decision rescinded on other grounds, 244 NLRB 275 (1979) (employers' post-work stoppage assertions of preference may not be representative of a free choice given that employers changed their original preference after a work stoppage "forced" them to reassign disputed work).

We find more persuasive NEFS's assertion that the work flexibility of Carpenters-represented employees makes it more efficient and less expensive to use them because its contracts frequently include work in addition to shower door installations, such as installing window treatments and medicine cabinets that Carpenters can perform. In light of this cited efficiency and greater cost-effectiveness, we find that the factor of employer preference favors awarding the disputed work related to shower door installation to employees represented by the Carpenters. *Machinists IAM District No. 15(Hudson General Corp.)*, 326 NLRB 62, 67–68 (1998) (great weight placed on employer preference where preference is supported by traditional factors relevant to making an award in a jurisdictional dispute).

3. Area and industry practice

The Employers and the Carpenters presented evidence that the area practice is to assign installation of demountable glass wall systems to Carpenters. Like other area employers, Colonial and NEFS contract directly with the manufacturers of the systems at issue here and must be certified by these manufacturers in order to install their products. Accordingly, the Employers' key employees—who are Carpenters—complete the required training and obtain these certifications. Further, area contractors had been using Carpenters to install demountable wall systems prior to the widespread use of the glass systems at issue here. After manufacturers started producing demountable glass wall systems, these contractors continued to use Carpenters for the installations. At one point in 2003, in an early demountable glass wall system project, the Carpenters and DC 35 agreed that the Carpenters would install the demountable glass wall system except for the handling of raw glass on that job. It was at the request of the Carpenters that many furniture contractors, including Colonial, signed collective-bargaining agreements with DC 35 so that glaziers could handle any raw glass that may have been part of these systems.

DC 35 did present testimony from several of its signatory contractors stating that they assign work involving interior glass walls to DC 35 glaziers. But these witnesses testified that the glass wall systems they installed—unlike the demountable systems here—were customized and fabricated in their shops and, as such, required handling of raw glass from fabrication of the glass wall systems to their installation. Thus, those were not the sort of premanufactured wall systems involved in the instant

case, which require far less glazing or handling of raw glass.[8] Accordingly, we find that the factor of area practice favors an award of the disputed work involving demountable glass walls to employees represented by the Carpenters. See *Elevator Constructors Local 2 (Kone, Inc.)*, 349 NLRB 1207, 1210 (2007) (where representatives of three large elevator companies testified that they had only used employees represented by Elevator Constructors to perform the disputed work, area and industry practice favored award of the work to Elevator Constructors).

With regard to the installation of glass shower doors, the factor of area practice favors DC 35's glaziers. The hearing testimony indicated that one signatory to both the Carpenters and the DC 35 agreements has used composite crews on 10 shower door installations from 2006 to 2016, and that two other firms that are signatories to both agreements assign shower door installation to DC 35 glaziers. Representatives from five area companies specializing in glass or shower door installation and that are not signatories to both Unions' agreements testified that they have always assigned all installation of shower doors to DC 35 glaziers. No testimony indicated an area practice of assigning this work only to Carpenters-represented employees. Accordingly, we find that the factor of area practice favors an award of the disputed work involving shower door installation to DC 35-represented employees.

4. Economy and efficiency of operations

The Employers and the Carpenters presented evidence that the work flexibility of Carpenters-represented employees made it more efficient and less expensive to use them, rather than DC 35 glaziers, for the disputed work involving both demountable glass wall systems and glass shower doors. The Employers point out that a carpenter can shift between normal carpentry work on the jobsite and the disputed work depending on the employer's needs, while the glaziers can only perform the limited tasks of handling and installing raw glass because of jurisdictional parameters. The Employers contend that the ability to move workers to different tasks is invaluable where the Employers' contracts usually cover more than just demountable wall systems or shower doors and when work on the jobsite is often delayed by circumstances such as late delivery of materials or the completion of preparatory work by other trades. Worker flexibility is also essential when projects and tasks are rescheduled because of access issues in a construction site, such as when an elevator needed for transporting materials is being used for other ongoing projects.

Although DC 35 argues that the Employers did not present evidence that DC 35 glaziers lacked the skill set necessary for such flexibility, there was no evidence that they have been as flexible on jobsites as the Carpenters or that the other work is within DC 35's jurisdiction. Finally, the actual hours spent by Carpenters-represented employees installing demountable glass wall systems is substantially less than DC 35's estimates of the hours its glaziers would need to complete the work.

Based on the above, we find that this factor favors an award of the disputed work involving both demountable wall systems and glass shower doors to employees represented by the Carpenters. *Glaziers District Council 16 (MALV, Inc. d/b/a Service West)*, 356 NLRB 760, 763–764 (2011) (more efficient to use carpenters to install demountable floor-to-ceiling partitions because they were faster and could perform other work on site, and subcontracting to glaziers to perform just one aspect of the work caused delay).

5. Relative skills and training

Although both the Carpenters and DC 35 presented evidence that the employees they represent have the necessary skills and training for the installation of demountable glass wall systems, several witnesses testified that Carpenters have additional relevant training and certification that DC 35 glaziers lack. The Carpenters and DC 35 both provide formal training for their members to be able to install demountable glass wall systems (through New England Carpenters Training Center for the Carpenters and the Finishing Institute of New England for DC 35). Significantly, however, Carpenters-represented employees are the only employees who have received the manufacturers' trainings and certifications, or on-the-job training from employees who have been trained and certified by the manufacturer. The record indicates that DC 35 signatory contractors do not have business relationships and certifications from manufacturers of the demountable glass wall systems that are being used at the projects in dispute. Further, the Carpenters have more experience installing these systems as the record indicates that they have been doing so for decades both prior to and after the widespread use of the glass wall systems, unlike DC 35 glaziers. Thus, based on the above, we find that this factor favors an award of the disputed work involving demountable glass wall systems to employees represented by the Carpenters.

As for the disputed work involving shower door installation, several witnesses testified that the Carpenters and DC 35 both provide formal training for their members to install shower doors. DC 35 appears to have more expe-

[8] As noted above, to the extent that raw glass is handled in the disputed wall installations here, the Carpenters does not claim that aspect of the work for the five locations at issue in Case 01–CD–183838.

rience installing shower doors, based on the testimony of several contractors that they always assign such work to glaziers. But the record also shows that in the case of at least one company, Carpenters have installed shower doors as a part of a composite crew for the last ten years. Because the evidence suggests that employees represented by both the Carpenters and DC 35 have skills and training for the shower door installation, and there is no indication that the shower doors installed here required specialized training and certification from the manufacturer, we conclude that this factor does not favor an award of the work in dispute to either employee group. *Miscellaneous Drivers Local 610 (Valley Plate Glass Co.)*, 196 NLRB 1140, 1142 (1972) (factor of skill did not favor either union where Glaziers-represented employees participated in 150 hours of classroom training to enable them to perform the disputed work, and the Teamsters-represented employees had no similar training but had performed identical work for at least one company).

VII. CONCLUSION

After considering all of the relevant factors, we conclude that employees represented by the Carpenters are entitled to perform the work in dispute involving installation of interior demountable glass wall systems at 125 High Street, Boston; 1 Federal Street, 8th Floor, Boston; the College Planning Center, Boston Public Library, Boston; Microsoft, One Memorial Drive, Cambridge; 200 Berkley Street Floors 9-12, Boston; and Partners Healthcare, Assembly Row, Somerville. We reach this conclusion based on the factors of employer preference and past practice, area and industry practice, economy and efficiency of operations, and relative skills and training.

We also conclude that employees represented by the Carpenters are entitled to perform the work in dispute involving installation of glass shower doors at the project known as Parcels B and C in the Seaport District in Boston. We reach this conclusion based on the factors of employer preference and economy and efficiency of operations.

In making these determinations, we award the work to employees represented by the Carpenters, not to that labor organization or its members.

VIII. SCOPE OF AWARD

The Employers have requested that our award encompass the entire geographic area where the jurisdiction of the Carpenters and DC 35 overlap. The Board customarily does not grant an award of the work in dispute beyond the specific jobsites involved where the charged party represents the employees to whom the work is awarded and to whom the employer contemplates continuing to assign the work. *Laborers Local 243 (A. Amorello & Sons)*, 314 NLRB 501, 503 (1994). Accordingly, we shall limit the present determination to the particular controversies that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of New England Finish Systems, who are represented by the New England Regional Council of Carpenters, Local 33 are entitled to do the work in dispute in Case 01–CD–183789 involving the installation of glass shower doors at the project known as Parcels B and C in the Seaport District of Boston; and the installation of interior demountable glass walls including all of the glass/glazing, frames, tracks, glass door hardware and rollers, and glass partitions of any size associated with the installation of those walls at 125 High Street, Boston.

Employees of Colonial Systems, Inc., who are represented by the New England Regional Council of Carpenters, Local 33, are entitled to do the work in dispute in Case 01–CD–183838 involving the installation of interior demountable glass walls, including all of the frames, tracks, glass door hardware and rollers, glass partitions of any size, and/or demountable partitions of any size, but excluding the handling and installation of raw glass tiles or panels, at 1 Federal Street, 8th Floor, Boston; the Boston Public Library, College Planning Center; Microsoft, One Memorial Drive, Cambridge; 200 Berkley Street Floors 9-12, Boston; and Partners Healthcare, Assembly Row, Somerville.

Dated, Washington, D.C. February 27, 2018

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Marvin E. Kaplan, Chairman

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Lauren McFerran, Member

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William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD